**UNITED STATES OF AMERICA**
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**CAYUGA MEDICAL CENTER**
**AT ITHACA, INC.**

**and** **Cases 03-CA-156375**
**03-CA-159354**
**1199 SEIU UNITED HEALTHCARE** **03-CA-162848**
**WORKERS EAST** **03-CA-165167**
**03-CA-167194**

# GENERAL COUNSEL'S BRIEF IN SUPPORT OF CROSS-EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

Pursuant to Section 102.46(e) of the Board's Rules and Regulations, Counsel for the General Counsel hereby submits this Brief in Support of Cross-Exceptions to the Decision of Administrative Law Judge David I. Goldman (ALJ), dated October 28, 2016, in the above-captioned cases. Under separate cover, General Counsel also files with the Board on this date an Answering Brief to Cayuga Medical Center at Ithaca, Inc. (Respondent's) exceptions. It is respectfully submitted that in all respects, other than what is excepted to herein, the findings of the ALJ are appropriate, proper and fully supported by the credible record.

## I. PRELIMINARY STATEMENT

The ALJ found that Respondent committed numerous and serious unfair labor practices. More specifically, the ALJ concluded that Respondent violated Section 8(a)(1) of the Act by maintaining certain unlawfully overbroad employee rules, disciplining an employee because of his protected concerted activities and pursuant to an unlawfully overbroad rule, soliciting employees to report on union activities, directing employees to cease distributing union literature, telling employees it is inappropriate to discuss salaries and/or wages, interrogating an

employee about union activities, threatening an employee with unspecified reprisals if her union activities did not cease, prohibiting the distribution and posting of union literature, removing and confiscating union literature, and threatening employees with unspecified reprisals and job loss in retaliation for participation in protected and concerted activities. (ALJD at 70:1-45; ALJD at 73:9-40; ALJD at 74:4-12).[1]

The ALJ further concluded that Respondent violated Section 8(a)(3) and (1) of the Act by suspending an employee, issuing a verbal warning to an employee, demoting an employee, and issuing an employee an adverse performance evaluation in retaliation for her union activities. (ALJD at 70:47 – 71:8; ALJD at 74:10-20).

In addition to the unfair labor practices found by the ALJ in his decision, the General Counsel respectfully requests that the Board find and conclude that Respondent also violated Section 8(a)(1) by maintaining certain unlawful rules--more rules than what the ALJ found in his decision. Specifically, the ALJ failed to conclude that the rule "Respects confidentiality and privacy at all times, including coworkers, adhering to the Social Networking Policy" violates the Act. (ALJD at 5:29-36). The ALJ further failed to conclude that the rules "interacts with others in a considerate, patient, and courteous manner" and "is honest, truthful, and respectful at all times" violate the Act. (ALJD at 6:25-35; ALJD at 7:1-5). While the ALJ correctly found that Respondent's treatment of Anne Marshall violated the Act, he failed to find that Respondent independently violated Section 8(a)(1) of the Act by issuing a verbal warning, a demotion and an adverse performance evaluation to Marshall based on Respondent's unlawful rules and because of Marshall's protected concerted activity. (ALJD at 1:14-15; ALJD at 57:fn. 52; ALJD at 64:fn.

[1] Throughout this brief the following references will be used: ALJD at __:__ for the Administrative Law Judge's Decision at page(s): line(s); GC Exh. ___; and Tr. ___ for transcript page(s).

57; ALJD at 69:38-39). Finally, the General Counsel respectfully requests that the Board find and conclude that Respondent's extensive and pervasive violations warrant a notice reading remedy. (ALJD at 1:23-24; ALJD at 72:fn. 60).

## II. ARGUMENT

### A. Three additional overbroad rules violate Section 8(a)(1) of the Act. (Exceptions 1-3)

#### 1. Applicable Legal Standards in Rule Cases

The three rules that the ALJ determined were lawful are, in fact, unlawful violations of Section 8(a)(1) of the Act. Under the Board's decision in Lutheran Heritage Village-Livonia, 343 NLRB 646 (2004), the mere maintenance of a work rule can violate Section 8(a)(1) of the Act if the rule has a chilling effect on employees' Section 7 activity. A rule that does not explicitly prohibit Section 7 activity is still unlawful if: 1) employees would reasonably construe the rule's language to prohibit Section 7 activity; 2) the rule was promulgated in response to union or other Section 7 activity; or 3) the rule was actually applied to restrict the exercise of Section 7 rights. Lutheran Heritage, 343 NLRB at 647.

Employees have a Section 7 right to discuss wages, hours, and other terms and conditions of employment with fellow employees, as well as with nonemployees, such as union representatives. Thus, an employer's confidentiality policy that specifically prohibits such employee discussions or that employees would reasonably understand to prohibit such discussion, violates the Act. Similarly, a confidentiality rule that broadly encompasses "employee" or "personnel" information, without further clarification, will reasonably be construed by employees to restrict Section 7 protected communications. See Flamingo-Hilton Laughlin, 330 NLRB 287, 288 n.3, 291-92 (1999). The Board has found the following rules to be unlawful:

> Courtesy is the responsibility of every employee. Everyone is expected to be courteous, polite and friendly to our customers, vendors and suppliers, as well as to their fellow employees. No one should be disrespectful or use profanity or any other language which injures the image or reputation of the Dealership.

Knauz BMW, 358 NLRB No. 164 (2012).

Employees also have the Section 7 right to criticize or protest their employer's labor policies or treatment of employees. Thus, rules that can reasonably be read to prohibit protected concerted criticism of the employer will be found unlawfully overbroad. For instance, a rule that prohibits employees from engaging in "disrespectful," "negative," "inappropriate," or "rude" conduct towards the employer or management, absent sufficient clarification or context, will usually be found unlawful. See Casino San Pablo, 361 NLRB No. 148, slip op. at 3 (Dec. 16, 2014); Claremont Resort & Spa, 344 NLRB 832 (2005) (rule prohibiting "[n]egative conversations about associates and/or managers" found unlawful). Moreover, employee criticism of an employer will not lose the Act's protection simply because the criticism is false or defamatory, so a rule that bans false statements will be found unlawfully overbroad unless it specifies that only maliciously false statements are prohibited. Id. at 4.

In Quicken Loans, Inc., 359 NLRB No. 141 (2014), affirmed in Quicken Loans, Inc., 361 NLRB No. 94, slip op. at 1, fn.1 (2014),[2] the Board found unlawful the employer's "Non-Disparagement" rule prohibiting employees from "criticizing, ridiculing, disparaging or defaming the company or its products etc. . . . through any written or oral statement or image . . . [including] via websites, blogs, postings on the internet or emails." In finding that that the

[2] In adopting the judge's finding, the Board also stated that it relied on Hills & Dales General Hospital, 360 NLRB No. 70, slip op. at 1 (2014), and Valley Hospital Medical Center, 351 NLRB 1250, 1252 (2007) (quoting Richboro Community Mental Health Council, 242 NLRB 1267, 1268 (1979)), enfd. 358 Fed. Appx. 783 (9th Cir. 2009). Id. at fn. 1.

rule chilled employees' Section 7 rights, the Board applied Albertson's Inc., 351 NLRB 254, 259 (2007) stating:

> There can be no doubt that an employee reading these restrictions could reasonably construe them as restricting his rights to engage in protected concerted activities. Within certain limits, employees are allowed to criticize their employer and its products as part of their Section 7 rights, and employees sometime do so in appealing to the public, or to their fellow employees, in order to gain their support. A reasonable employee could conclude that the prohibitions contained in the Agreement prohibited them from doing so. The Non-Disparagement provision therefore violates Section 8(a)(1) of the Act.

Similarly, the Board in Kinder-Care Learning Centers, 299 NLRB 1171, 1171-1172 (1990), articulated that "[u]nder Section 7 of the Act, employees have the right to engage in activity for their mutual aid or production" and that unlawful restrictions on this right included restricting employees' communications about their employment "to other employees, an employer's customers, its advertisers, its parent company, a news reporter, and the public in general."

Based on the above well-settled Board law, three of Respondent's rules are unlawfully overbroad and violate Section 8(a)(1) of the Act.

2. "Respects confidentiality and privacy at all times, including co-workers, adhering to the Social Networking Policy." (Exception 1)

Employees would reasonably interpret this rule to inhibit Section 7 rights because it is overbroad. This rule fails to provide any context for what confidentiality that employees need to maintain relating to their "co-workers." The ALJ notes that this rule does not provide an explanation or clarification to which subjects this rule relates to, but concludes that the "clinical excellence" header under which it falls must be "a part of and relate to" that rule. (ALJD 5:38-40). However, the inclusion of co-workers in this rule itself removes the rule from the clinical

setting, particularly when applied to Respondent's social networking policy. Maintaining a co-worker's privacy and confidentiality in person or over a social network is immaterial to her clinical excellence. Furthermore, the fact that other rules under this header may more closely relate to clinical excellence does not have any bearing on whether this particular rule is categorized under the appropriate header. (ALJD at 5:40-42). Thus, this rule is unlawfully overbroad and violates Section 8(a)(1) of the Act.

3. "Interacts with others in a considerate, patient and courteous manner" and "Is honest, truthful, and respectful at all times." (Exceptions 2-3)

These rules are unlawfully overbroad as employees would reasonably understand these rules to restrict behaviors that could be considered inconsiderate or discourteous, like protected activities. The rule requiring "respect" would also be reasonably interpreted in a number of ways that violate employees' Section 7 rights. Similar rules have been found overbroad. For example, the Board found the following to be unlawful:

> Courtesy is the responsibility of every employee. Everyone is expected to be courteous, polite and friendly to our customers, vendors and suppliers, as well as to their fellow employees. No one should be disrespectful or use profanity or any other language which injures the image or reputation of the Dealership.

Knauz BMW, 358 NLRB No. 164 (2012).

In finding that these rules were lawful, the ALJ notes that the rules "sit squarely within a section of the COC devoted to 'customer service'" and "were they reasonably likely to be read as directed to employees interactions with management or with other employees, or even to nonemployees, unrelated to servicing patients, I would agree." (ALJD at 7:2-5). Contrary to the ALJ's findings, these rules were indeed used against Marshall in a non-patient care setting when she was issued her verbal warning (ALJD at 7:fn. 8). There is no evidence that these rules were

used "pretextually" as the ALJ suggests, but rather formed the basis for Respondent's unlawful discipline of Marshall. (ALJD at 7:fn 8).

Furthermore, assuming arguendo that these two rules are lawful under prong one of Lutheran Heritage, they were applied to restrict the exercise of Marshall's Section 7 rights and should be found unlawful under prong three of Lutheran Heritage. Specifically, Respondent relies on these rules, in part, in disciplining Marshall, demoting her and issuing her an unfavorable performance evaluation. (Tr. 115, 317; GC Ex. 12). Indeed, the ALJ notes that versions of these two rules were cited in a verbal warning issued to Marshall. (ALJD at 7: fn. 8). Additionally, Marshall's verbal warning, which cited these two rules, was punishment "for an incident that occurred during the course of protected and concerted activity." (ALJD at 57:2-3). Respondent relied on the verbal warning for Marshall's future discipline. Honesty was also further assessed during the annual evaluation, in which Marshall was again penalized for exercising her Section 7 rights. (ALJD at 68:6, 25-31).

In finding these two rules lawful, the ALJ noted, in part, that these rules were cited in "one instance" involving Marshall's verbal warning. However, these rules were consistently used by Respondent to restrict Marshall's Section 7 rights, including relying of them to support Marshall's June 26, 2015 suspension. (Tr. 105, 115, 317 974, 975, GC Ex. 12). Moreover, under Board precedent one instance of applying the rules is enough to render them unlawful under the third prong of Lutheran Heritage. See, e.g., Michigan State Employees Association, 364 NLRB No. 65 (August 4, 2016) (finding a rule unlawful under prong three of Lutheran Heritage when Respondent suspended and discharged one employee for violation of the rule). Accordingly, not only are these rules unlawful as employees would reasonably interpret them to restrict Section 7

rights, but these rules were indeed applied to restrict an employee's Section 7 rights. Both of these rules should be found unlawful and in violation of Section 8(a)(1) of the Act.

**B. Respondent independently violated Section 8(a)(1) of the Act by issuing Anne Marshall a verbal warning, demoting her, and issuing her an adverse performance evaluation, because she violated Respondent's unlawful rules. (Exception 4)**

Among other violations, the ALJ correctly found Section 8(a)(3) violations for Marshall's verbal warning, demotion, and poor performance evaluation. However, in his decision the ALJ dismissed the General Counsel's separate theory that Marshall's verbal warning, demotion, and poor performance evaluation violated Section 8(a)(1) of the Act because she violated Respondent's unlawful rules. Here, the rules themselves are unlawful, either because they are overbroad or were applied unlawfully, which implicates the Double Eagle standard in violation of Section 8(a)(1). Double Eagle Hotel & Casino, 341 NLRB 112 (2004).

In The Continental Group, Inc., 357 NLRB No. 39 (2011), the Board initially noted it had long adhered to and applied the principle that discipline imposed pursuant to an unlawfully overbroad rule is unlawful (the "Double Eagle rule"). Double Eagle Hotel & Casino, 341 NLRB 112 (2004). However, in Continental, the Board decided to limit the application of the Double Eagle rule to discipline imposed because the employee engaged in protected conduct or in conduct that otherwise implicates the concerns underlying Section 7 of the Act.

Nevertheless, an employer will avoid liability for discipline imposed pursuant to an overbroad rule if it can establish that the employee's conduct actually interfered with the employee's own work or that of other employees or otherwise actually interfered with the employer's operations, and that the interference, rather than the violation of the rule, was the reason for the discipline. Miller's Discount Dept. Stores, 198 NLRB 281 (1972), enfd. on other grounds sub nom.; NLRB v. Daylin, Inc., 496 F.2d 484 (6th Cir. 1974); see also Switchcraft,

Inc., 241 NLRB 985 (1979), enfd. 631 F.2d 734 (7th Cir. 1980); Wayne Home Equipment Co., 229 NLRB 654 (1977); Singer Co., 220 NLRB 1179 (1975).

It is the employer's burden, not only to assert this affirmative defense, but also to establish that the employee's interference with production or operations was the actual reason for the discipline. In this regard, an employer's mere citation of the overbroad rule as the basis for discipline will not suffice to meet its burden. Rather, assuming that the employer provides the employee with a reason (either written or oral) for its imposition of discipline, the employer must demonstrate that it cited the employee's interference with production and not simply the violation of the overbroad rule. See, e.g., Gerry's I.G.A., 238 NLRB 1141, 1151 (1978).

Here, Respondent has failed to meet such a burden. The verbal warning was issued for violating a code of conduct rule because during an interaction with interim director Norman Joel Brown, Marshall was allegedly standing in her supervisor's personal space. (Tr. 975; GC Ex. 25, 26). The rules Marshall was disciplined for violating are, (1) "interacts with others in a considerate, patient and courteous manner," (2) "is honest, truthful, and respectful at all times," and (3) avoiding "inappropriate and disruptive communications/behaviors that include but are not limited to: displaying behaviors that would be considered by others to be intimidating, disrespectful or dismissive[;]" [and] disregards or is insensitive to the personal space or boundaries of others. (GC Ex. 3, 15). The ALJ correctly found that the third rule violates Section 8(a)(1) for being unlawfully overbroad, but did not find an independent violation of Section 8(a)(1) for the subsequent verbal warning. (ALJD at 8:35). Moreover, the ALJ notes that these three rules were cited specifically in the verbal warning memo and that the verbal warning was punishment "for an incident that occurred during the course of protected activity." (ALJD at 56:44-46; ALJD at 57:2-3). Despite this, the ALJ declined to find the alternative Section 8(a)(1)

theory that Respondent actually applied these rules to restrict Marshall from exercising her protected Section 7 rights. (ALJD at 57:fn. 52).

Additionally, Marshall's demotion was based on the previously issued unlawful suspension and verbal warning, which were based on the unlawful rules. Similarly, Marshall's performance evaluation was based on the previous unlawful suspension, verbal warning, and demotion. Respondent's own witness, Linda Crumb, admits that three rule violations led to Marshall's demotion. (Tr. 975-76). The rules are again referenced in the evaluation in the form of exhibiting "honest" behavior. (GC Ex. 29(h)). The ALJ should have found, and the Board should now find, independent Section 8(a)(1) violations because Marshall's verbal warning, demotion, and poor performance evaluation were based on Respondent's unlawfully overbroad rules and were imposed because Marshall engaged in protected conduct or conduct that implicates the concerns underlying Section 7 of the Act.

**C. Respondent independently violated Section 8(a)(1) of the Act, by issuing Anne Marshall a verbal warning, demoting her, and issuing her an adverse performance evaluation, because she engaged in concerted activities. (Exception 5)**

The ALJ declined to find that Marshall was disciplined for her protected concerted activity when Respondent issued her the verbal warning and subsequent demotion, and adverse performance evaluation. (ALJD at 57:fn. 52; ALJD at 70-71). However, the facts support the conclusion that Respondent violated Section 8(a)(1) by issuing Marshall a verbal warning for engaging in protected concerted activities, and then relying on that verbal warning in her demotion and adverse performance evaluation.

On July 3 one of Marshall's colleagues, Robert Styer, had a patient that needed to be transported. (Tr. 229). Styer was responsible for two patients, one was critically ill on multiple infusions that needed 15 minute observation for titration and the second patient needed to be

transported for a test that could potentially last four hours. (Tr. 229). After approaching Brown for assistance with no success, Styer approached Marshall for help. (Tr. 229). Marshall approached Brown on Styer's behalf to ask for a ward clerk. (Tr. 229, 1049). Brown and Marshall stood in the back hallway together while he made a phone call. (Tr. 231, GC Ex. 26). Brown admitted that it was not her patient that she was requesting help transporting. (Tr. 1049). Earlier that same shift Marshall brought to Brown's attention that the next 11 days had holes in the schedule and asked for help in resolving the issue. (Tr. 1050, GC Ex. 49). These facts direct from the transcript are very similar to the version found by the ALJ in his decision. (ALJD at 51-52). The ALJ correctly notes in his decision that with the verbal warning "the Respondent, on its face, punished Marshall for an incident that occurred during the course of protected and concerted activity." (ALJD at 57:2-3). Thus, Respondent's asserted reasons for giving the Marshall the verbal warning was, as the ALJ recognized, her protected concerted activity.

To establish a protected concerted activity 8(a)(1) violation, the following conditions have to be satisfied, as established in Meyers I, 268 NLRB 493 (1984):[3] 1) the activity engaged in by the employee(s) was concerted, 2) the employer was aware of the concerted activity, 3) the activity in question must be protected by the Act, and 4) the "discharge or other adverse personnel action was motivated by protected activity."[4] The circumstances in this case easily meet all four conditions. Marshall's engagements with Brown were for staffing concerns. The issue of staffing is admittedly a term and condition of employment. (GC Ex. 42); Holy Rosary

[3] The Board's decision in Meyers I was remanded in Prill v. NLRB, 755 F.2d 941 (D.C. Cir. 1985), because the Court of Appeals felt that the Board's narrowing of what constituted "concerted" activity was "grounded on faulty legal premise." However, in Meyers II, 281 NLRB 882 (1986), the Board provided a more acceptable legal rationale for the narrower definition of concerted activity, and therefore the 4-part test remains valid. See NLRB v. Oakes Machine Corp., 897 F.2d 84 (2d Cir. 1990).

[4] NLRB v. Oakes Machine Corp., citing Meyers I, supra.

Hospital, 264 NLRB 1205, fn. 2 (1982) (holding that complaining about nurse staffing levels is protected concerted activity). In fact, she approached her supervisor on behalf of her colleague who needed assistance because of inadequate staffing. (Tr. 229, 1049). None of Marshall's conduct would remove her from the protections of the Act and no allegations by Respondent have been made in that regard. Finally, her interactions with her supervisor about staffing formed the basis for her verbal warning. The ALJ decided Respondent's punishment for Marshall's protected concerted activity was a pretext for disciplining her for her union activity. (ALJD at 57:4-5). The ALJ's finding that Respondent's asserted reasons for disciplining her were pretextual was correct, and well supported by the record. However, the AJL's finding of pretext does not negate the fact that the very conduct upon which Respondent relied to discipline her constituted protected concerted activity. In fact, the ALJ found that she was engaged in protected concerted activity during her interactions with Brown on July 3. Therefore, even if Respondent decision to discipline her was not based on her union activity, it still would have violated the Act and an independent violation should be found on this basis. (ALJD at 57:2-3).

The record evidence and ALJ decision all support the conclusion that Marshall's demotion and adverse performance evaluation were based on her previous disciplines, including her verbal warning. As the ALJ concluded "the Respondent has not shown that it would have demoted her without reliance on the unlawful warnings issued to Marshall earlier in the summer. Indeed, Crumb specifically testified that the demotion was the result of 'a series of behaviors' including the 'incidents in June' and the 'incident in July." (ALJD at 64:15-19). Similarly, the ALJ found that "Respondent makes no bones about the fact that the lower evaluation was causally linked to the previous disciplinary incidents meted out to Marshall." (ALJD at 69:35-36). Based on the above, the Board should find that Respondent independently violated Section

8(a)(1) by issuing Marshall a verbal warning for engaging in protected concerted activity . and subsequently relying on that warning to demote her and give her an adverse performance evaluation.

**D. The ALJ should have ordered a notice reading. (Exception 6)**

A remedy requiring a notice reading is appropriate in this case. While the ALJ found that "the unfair labor practices engaged in by the hospital were serious" he declined to grant a notice reading. (ALJD at 1:23-24). In DHSC, LLC, 362 NLRB No. 28, slip op at *1 (2015), the Board found a notice reading appropriate because of "the serious and persistent nature of the Respondent's multiple unfair labor practices." Reading the notice aloud, whether by a high-ranking management official at the facility or by an Agent of the National Labor Relations Board, "serves as a minimal acknowledgement of the obligations that have been imposed by law and provides employees with some assurance that their rights under the Act will be respected in the future." Id. A public reading of the notice is an "effective but moderate way to let in a warming wind of information, and more important, reassurance." In re Federated Logistics and Operations, 340 NLRB No. 36 (2003) (citing J.P. Stevens & Co. v. NLRB, 417 F.2d 533, 539-540 (5th Cir. 1969)). The Respondent in Federated Logistics and Operations:

> violated Section 8(a)(1) by maintaining and enforcing an overly broad no-distribution/no-solicitation policy, interrogating employees, creating the impression of surveillance, soliciting employees to conduct surveillance, soliciting employee grievances, promising unspecified benefits, threatening employees that selecting the Union would be futile, threatening the loss of benefits, threatening that wages would be frozen or reduced, and threatening employees that the Union would strike and that the Respondent would react by moving its operation to another facility; and it violated Section 8(a)(3) by withholding a wage increase, suspending employees for engaging in protected activity, and by issuing discriminatory warnings.

In re Federated Logistics and Operations, 340 NLRB No. 36, 4. Further, the Respondent in that case made statements and enforced rules that pervaded the unit, made statements that had a long-term coercive impact on the unit, and many of the violations were committed by high-level management officials. Id.

This case is analogous to DHSC, LLC and Federated Logistics and Operations. In DHSC, LLC an employer unlawfully and discriminatorily warned and discharged a nurse employee and made unlawful statements to employees. In Federated Logistics and Operations, the employer committed many of the same violations during an organizing campaign as Respondent did here including disciplines, threats, and unlawful rules. In both cases, among other remedies, the Board required the employer to read the Board's notice to unit employees during their paid work time, in the presence of a Board agent, at a time and date selected by the union. Alternatively, the employer could opt to have the notice read by the Board agent in the presence of a responsible official of the employer.

In this case, Respondent's myriad unfair labor practices include suspension, discipline, and demotion of a prominent union supporter during a union organizing campaign; unlawful statements sent to every nurse employee, threats, and surveillance of employees; forcing employees to make observable choices about their union support. These unfair labor practices pervaded the hospital and were almost always committed by high-level management officials. The threats, rules, and requests for surveillance have a long-term impact on the unit. Contrary to the ALJ's determination, Respondent's violations do "reflect a calculated attack on employee organizing rights." (ALJD at 72:fn. 60). Respondent's conduct directed at Marshall, the lead organizer, grossly inhibited her ability to organize the hospital. This occurred both because her demotion reduced her visibility in the hospital and removed her from other hospital units where

her duties used to take her. Similarly Respondent targeted Marsland, the other lead organizer. The ALJ found that these violations simply did not necessitate a notice reading to remedy the violations; however, the unfair labor practices here, like those in DHSC, LLC and Federated Logistics and Operations, require a notice reading. (ALJ at 72:fn. 60).

The ALJ found numerous violations of Section 8(a)(1), including maintaining unlawfully overbroad employee rules, sending monthly hospital-wide notices to the nurses that contain unlawful statements regarding the union campaign, soliciting employees to report on union activities, directing employees to cease distributing union literature, telling employees it is inappropriate to discuss salaries and/or wages, interrogating employees about union activities, prohibiting the distribution and posting of union literature, removing and confiscating union literature, disciplining an employee pursuant to an unlawfully overbroad rule, and threatening employees with unspecified reprisals and job loss in retaliation for participation in protected and concerted activities. (ALJD at 73:9-40; ALJD at 74:4-12). The ALJ further concluded that Respondent violated Section 8(a)(3) by disciplining, demoting and issuing an employee an adverse performance evaluation in retaliation for union activities. (ALJD at 74:10-20). Through its actions Respondent irradiated the hospital with unlawful anti-union messages and the most appropriate remedy to ensure the employees understand their rights and the extent of the violations is a notice reading.

## III. CONCLUSION

For all the reasons set forth above, General Counsel respectfully requests that the Board grant the General Counsel's Cross-Exceptions to the Decision of the Administrative Law Judge and issue an appropriate order that Respondent be found to have committed the additional violations of Section 8(a)(l) of the Act, as discussed above. General Counsel also requests that

the Board order a notice reading in this case. General Counsel further requests that the Board issue an order otherwise affirming and adopting the Decision and Recommendations of the ALJ.

**DATED** at Buffalo, New York this 9th day of December, 2016.

Respectfully submitted,

/s/ Jessica L. Noto

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